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CONTENTS

CURRENT TOPICS

The Home Secretary and Justices' Clerks

AMONG the numerous matters to which he referred in his address to the Justices' Clerks' Society, at Hove, on 12th September, 1947, the HOME SECRETARY expressed his personal acceptance of the proposals in the Report of the Roche Committee, and his regret that so far it has not been possible to find time to carry their recommendations into legislative effect. He said that he did not allocate parliamentary time but was among the suppliants for it, and he hoped that before this Parliament ended they might have an opportunity of embodying the recommendations of the Roche Committee in legislation. With regard to juvenile offenders he did not think that we had yet discovered the right balance between compassion and severity. He was quite certain that to bind over the same offender for the same class of offence three or four or more times was not the way in which the law would be brought into respect and the character and the propensities of the offender reformed. There was only one general rule that he would endeavour to put forward, and that was that there should be an earnest effort on the part of magistrates and those who advise them to see the problem from the offender's point of view, particularly in the fixing of the penalty. He also said that he had steadfastly set his face, while in office, against issuing any large number of circulars to benches. He hoped that the tradition that central control of magistrates' actions was non-existent in this country would long remain. In reply to a question by the chairman as to whether it would be possible to continue the helpful informal conferences that they had had at the Home Office during the war, when they dealt with such matters as, for instance, the question of the deduction of income tax on maintenance orders (s. 25 of the Finance Act, 1944), and actually got them on to the Statute Book, the Home Secretary said that he would at once take up with his advisers the question of the possibility of renewing the conferences.

Divorce and Welfare

THE forcible language used by the ARCHBISHOP OF YORK in castigating modern tendencies against the sanctity of marriage will be applauded by all who have witnessed and assisted the procession of petitioners through the divorce courts. "Behind the bare figures," his lordship said at Selby, on 23rd September, "there is a mass of sin, misery and unhappiness impossible to measure . . ." It had been stated that one out of every five recent marriages would end in divorce. At this rate we were approaching the ideal of some of the *intelligentsia*, who advocated divorce by consent. There will be more divided opinions on his authoritative pronouncement that "we have no alternative but to continue the existing rule and custom of our Church, which witnesses to the Christian law of marriage by refusing to allow the church service to be used when the marriage has been dissolved by the courts, and the former husband or wife is still living." He would try, he said, to use firmly and sympathetically the discretion as to the admission of re-married divorced persons to communion, but he had no discretion to grant permission for the marriage service to be used for divorced persons, except that the discipline did not apply to persons who wished to marry after a decree of nullity. Dr. Garbett has a clear assurance of support for his plea for the carrying out of the proposal of the Denning Committee that the marriage welfare services be supported by Government grants. In view of official promises to that end, one may well ask when this is to be. Is it to be now, or "in the not too distant future"?

The Draft Canon Law and Nullity

ONE of the most important of the ARCHBISHOP OF YORK'S pronouncements on the same occasion concerned the new draft canon law. His lordship said that he was unable to support the proposal in that code that if a bishop, sitting with his chancellor, found good grounds upon which a marriage dissolved by the civil courts could have been declared null and void, he could allow either of the parties to re-marry in the church as if the first marriage had been declared void. First, he said, it would be difficult to constitute such an ecclesiastical court in each diocese. Judging from experience in the United States, where the Episcopal Church gave the bishops wide discretion, the number of applications would be very great. Secondly, a declaration of nullity would apply to the guilty as well as to the innocent party. Thirdly, it would tend to bring the law into contempt if, after the civil courts had dissolved a marriage which they treated as valid, the church court or a bishop declared that it had been invalid from the outset. The last two reasons seem to express both the law and common sense on the matter. The new draft canon law, as Sir ALAN P. HERBERT wrote in *The Times* of 26th September, seems to contemplate new causes of nullity, or at least, as was admitted in a letter in its defence to *The Times* of 29th September, to make the church a judge of an issue of nullity which has never been decided by the civil courts. As to the first reason, it is a little difficult to argue from the analogy of the U.S.A., where conditions and standards are so different from those prevailing here. For example, according to the July, 1947, issue of the *New York University Law Quarterly Review*, in applying a rule that there must be free and full consent to the marriage contract, New York courts have annulled marriages on such grounds as failure to go into the hotel business after marriage (*Dilorenzo*

v. *Do.*, 174 N.Y. 467), and misrepresentation that a wife was a widow when in fact she was a divorcee (*Fontana* v. *Fontana*, 77 Misc. 28).

Copies of Correspondence

SOLICITORS hardly need to be told that they must be careful in having copies of correspondence correctly prepared for the use of the court. Letters are frequently vital to one side or the other in litigation and, in addition, judges are apt to apportion to solicitors far more than their fair share of blame if anything goes wrong. It is rarely, if ever, that a judge comments sympathetically on solicitors' present-day difficulties in securing competent staff and in supervising everything that goes through a busy office. Labour is scarce and growing scarcer, and the strain of bearing the burden of supervising all the details of office administration is beginning to show results. In a case at Bristol, on 26th September, the learned Divorce Commissioner, His Honour Judge WETHERED, said with regard to a wrongly copied letter: "This might have led to a serious miscarriage of justice." The word "happy" was mentioned in the copy as describing a home, but it did not occur in the original letter. The Commissioner said: "Correspondence in cases like this should be very carefully prepared. I feel that copies of letters should be facsimiles. Even the corrections and alterations should be put in; often the whole case can turn on a correction in a letter." There can be little complaint where a judge, as in this case, merely directs attention to the possible results of incorrect copying. One may wonder, however, whether the matter is quite so serious, having regard to the usual effectiveness of notices to produce and admit originals and the availability of originals for the bench. Counsel in the Bristol case expressed the view that properly typed copies were preferable to photostat copies, "which have rendered indistinct letters doubly indistinct." In spite of this divergence of expert views on the best way to prepare correspondence, solicitors will continue to do their best in the face of mounting difficulties, and will ask critics to remember that, as an eminent King's Counsel once told a jury, "even judges are not infallible."

Keeping Records

THE new Control of Motor Fuel Order, 1947, dated 22nd September, which came into operation on 1st October, is concerned to some extent with the keeping of records. There has always been a tendency on the part of the criminal courts to construe strictly any provisions in the emergency legislation and orders relating to the keeping of records. It has not been unusual in cases of food offences for fines of £20 and upwards to be imposed even where the real mitigation has been put forward that owing to shortage of staff and the hurry and scurry of preparing meals and washing up, little time has been left for the keeping of those meticulous records so dear to the heart of the civil servant. The new Motor Fuel Order provides that "any person to whom any coupon (other than a basic ration coupon) has been issued under the provisions of this order, authorising the supply of motor fuel for use in a private motor-car or private motor-cycle, shall, if required so to do by a direction given by the Minister, keep, in relation to that car or cycle, and to the consumption of motor fuel acquired against the surrender either of that coupon or of any basic ration coupon issued in respect of the car or cycle, a record containing such particulars as may be specified in the direction." The order also provides that anyone to whom have been issued coupons bearing the letters "Agr," "F," "Ind," "W," "Misc.," or "Z" must record particulars of fuel acquired in a daily record and also keep a record of the quantity used for every purpose for which the coupons were issued. Having regard to the number of cases in which the keeping of insufficient records is charged, it is surprising that more publicity is not given to these provisions. In the absence of a better system of distributing scarce commodities than by imposing a heavy burden of form filling, coupon cutting and record keeping, the implications of failure to observe the manifold injunctions which are nowadays issued from official sources should be fully notified to the public.

Resale Prices

MR. G. H. LLOYD JACOB, K.C., has been appointed chairman of a Board of Trade Committee which has been asked to consider the practice by which minimum wholesale and retail prices or margins for the resale of goods are fixed by producers, and its effects on supply, distribution and consumption, and to report whether, in the light of present conditions, and particularly of the need for the maximum economy and efficiency in the production and distribution of goods, any measures are desirable to prevent or regulate its continuance. It is not within the scope of the inquiry to consider resale price maintenance in the building materials trades, as that is at present being considered by the committee appointed by the Minister of Works to report on the distribution of building materials. Any person or association wishing to offer written evidence, which the committee desires to receive by 31st October, should write to the Secretary, Committee on Resale Price Maintenance, Room 709, Board of Trade, I.C. House, Millbank, London, S.W.1, to whom all other correspondence relating to the work of the committee should be addressed.

Control of Engagements

IT was with some apprehension that solicitors and other professional people awaited the exegetical details as to the future administration and interpretation of the new Control of Engagement Order, 1947, which comes into operation on Monday, 6th October. The publication of those details by the Ministry on 27th September shows that the apprehension which was felt was not altogether unfounded. The employments in a managerial, professional, administrative or executive capacity which are excepted from the application of the order will not, it seems, be adequate to protect all the labour employed in solicitors' offices. "Managerial capacity" will clearly cover managing clerks, because, as the Ministry say, while the term "manager" does not necessarily comprise all persons who are called managers, it relates to a salaried official in executive charge of an office. As to a "professional" capacity, the Ministry stated that persons holding standard qualifications of a professional nature are normally regarded as professional. They go on to say, however, that not all qualified persons are necessarily employed in a professional capacity and that, for example, a qualified accountant employed as an audit clerk could not be said to be employed in a professional capacity. We should have thought otherwise, and certainly, if this example is valid, it raises serious implications which will have to be resolved. Perhaps any difficulties will be smoothed over by the Ministry's definition of administrative and executive capacities as existing where a person is required to take decisions and to organise or to develop ideas on his own initiative. This might almost apply to the breaking of stones. The list of persons who are not excepted, however, which includes clerks and supervisors (other than those with executive responsibility) and shorthand typists and typists, sufficiently indicates the further labour difficulties which will confront solicitors in the future.

Securities and the Exchange Control Act, 1947

A LARGE sheaf of Treasury Orders—S.R. & O., 1947, Nos. 2035–2056, 2071 and 2072—have now signalised the coming into operation on 1st October of the Exchange Control Act, 1947, which largely supersedes the Defence (Finance) Regulations in the control of, *inter alia*, the issue and transfer of securities. By the Exchange Control (Transitional Provisions) Order, 1947 (S.R. & O., 1947, No. 2052), the following provisions of the Defence (Finance) Regulations are revoked, namely, regs. 2, 2B, 2C, 3, 3A, 3B, 3BA, 3C, 3D, 3E, 3F, 4, 5, 5B and 5C, but, in general, directions, permissions, consents, etc., given by the Treasury under those regulations continue to have effect as if given under the new Act. The Bank of England has issued a series of Notices (E.C. (Securities) 1–7) explaining the restrictions, and details may be obtained from banks. The attention of solicitors is called to the Exchange Control (Declarations and Evidence) Order, 1947 (S.R. & O., 1947, No. 2041), under which firms of solicitors in the United Kingdom are included among the persons

authorised to make the declarations prescribed by the order as to the circumstances attending a transfer of securities or the registration of a bearer security. These declarations are included in Forms D, BA and BUK issued under the Act for use on the transfer respectively of securities (i) registered in the sterling area otherwise than in a subsidiary register, but on which dividends or interest are not payable by coupon; (ii) registered outside the sterling area, or registered in a subsidiary register in the sterling area, and most bearer and coupon securities, and (iii) securities prescribed under s. 17 of the Act (see S.R. & O., 1947, No. 2047, which prescribes securities on which capital moneys, dividends or interest are payable or can be required to be paid in Canadian, Newfoundland or United States dollars, Swedish kronor or Swiss francs). Reference has already been made in these columns (*ante*, pp. 473–474) to the inclusion of solicitors in the class of "temporary recipients" in relation to securities deposited with an "authorised depositary" in pursuance of ss. 15 and 16 of the Act, and their attention is particularly directed to Bank of England Notices, E.C. (Securities) Nos. 2 and 5. Authorised depositaries are named in S.R. & O., 1947, No. 2036, and consist of offices in the United Kingdom or the Channel Islands of some 107 of the principal banking institutions. Securities exempted from the requirement of being deposited are listed in the Exchange Control (Deposit of Securities) (Exemption) Order, 1947 (S.R. & O., 1947, No. 2043).

Prescribed Courts

By para. 4 of Sched. IV to the Exchange Control Act, 1947, the Treasury are empowered, in relation to any court for which rules of court have been made in accordance with para. 3 thereof (see *ante*, pp. 506–508), to make an order prescribing that court, whereupon in any proceedings therein a claim for the recovery of any debt shall not be defeated by reason only of the debt not being payable without the permission of the Treasury and of that permission not having been given or having been revoked. An order has now been made (the Exchange Control (Prescribed Courts) Order, 1947; S.R. & O., 1947, No. 2046) prescribing for this purpose the Supreme Court, the county courts, the Salford Hundred Court of Record, the Liverpool Court of Passage, and the Court of Chancery of the County Palatine of Lancaster.

Town and Country Planning Act, 1947

In Circular No. 34 issued by the Ministry of Town and Country Planning, on 8th September, 1947, attention is called to the fact that the Town and Country Planning Act, 1947, was passed on 6th August; but the provisions come into operation immediately only to the following extent: (*a*) The Central Land Board may be set up. (*b*) The new standard of compensation replaces the "1939" standard. (*c*) The powers of the Minister of Works and the Postmaster-General, under s. 37 (2), to acquire land before a Development Plan has come into operation, become available. (*d*) The powers of local authorities, under s. 38 (2), to acquire land before a Development Plan has come into operation, become available, but only to a very limited extent. The rest of the Act will come into operation on an appointed day. The aim is that this should be 1st April, 1948, and a definite decision will be reached as soon as possible. Full guidance, both on the provisions of the Act and on the regulations, etc., made under it, will be given to local authorities before the appointed day.

Footpaths and the Countryside

It is a matter for rejoicing that the Committee on Footpaths and Access to the Countryside appointed in July, 1946, by the National Parks Committee, at the instance of the Minister of Town and Country Planning, have decided so soon and so emphatically in favour of full pedestrian enjoyment of rural England. Their report (H.M. Stationery Office, Cmd. 7207, 1s. 3d.) was published on 24th September. Especially gratifying is their proposal that to prevent rights of way from falling into disuse county councils and county borough councils should, after consultation with district and parish councils, undertake a complete survey forthwith so that an authoritative record of rights of way may be prepared before it is too late. It is doubtful whether this would involve much, if any, increased staff, as county councils already engage staffs which cover every mile of road from which footpaths start. The survey, it is suggested, should be in three stages, so as to allow for public advertisement, public deposit and inspection, representations from landowners and the public, and notice of legal objections to be lodged up to six months after the penultimate map. The whole period of preparation would be four years, unless prolonged by the hearing of any disputed cases. The committee further recommend that existing legal methods of settling rights of way cases should be replaced by a simplified procedure at quarter sessions with rights of appeal to the High Court. After criticising as inadequate the Act of 1939 allowing access to uncultivated land, the committee recommend that full public access be given to all uncultivated land, "whether mountain, moor, heath, down, cliff, beach or shore," and that the planning authority, subject to the safeguarding of private interests by means of local inquiries to hear objections, should designate all such land as "access land." The report recommends also that there should be provisions for withdrawal of land from public access when it ceases to be uncultivated, for exceptions with regard to such land as building, agricultural and sports land, and for the payment of compensation when it can be shown that "the rental or capital value of land has been materially reduced over a period of years as a result of access designation."

RESTRAINT OF MEDICAL PRACTICE

The decision of the Court of Appeal in *Routh and Another* v. *Jones* [1947] 1 All E.R. 758, has attracted a good deal of attention in medical and legal circles, chiefly, it may be surmised, on account of the frequency with which covenants similar to the one in question in that case are to be found in the service agreements of qualified assistants to medical practitioners. The facts do not admit of concise statement (see 91 Sol J. 354), but the clause in dispute must be set out: "The assistant . . . will not during this contract . . . save in the employ of the principals nor within the space of five years thereafter, practise or cause or assist any other person to practise in any department of medicine, surgery or midwifery, nor accept nor fill any professional appointment whether whole time or otherwise, whether paid by fees, salary or otherwise, or whether honorary, within a radius of ten miles from" the address of the employer's practice. Naturally, the validity of such a covenant turns not a little on the particular locality and the type of practice carried on by the covenantee. With these points we shall not concern ourselves here, beyond noticing that the Court of Appeal confirmed the decision of Evershed, J., that, in the circumstances of the case, the clause went beyond what was reasonably necessary for the protection of the covenantees' practice as general medical practitioners in the small town of Okehampton, Devon.

Let us, however, examine some of the broader legal issues involved.

To begin with, it is important to note that the covenant in question was one between master and servant. Now it has been clear, at least since the leading case of *Morris* v. *Saxelby* [1916] 1 A.C. 688, that the courts will not so readily uphold as reasonable such a covenant exacted by an employer of his employee as they will enforce a similar covenant given by a vendor to his purchaser as a term of the sale of a business. Public policy, in modern law, avoids any restraint of trade as such; except, as Lord Macmillan said in *Vancouver Malt, etc., Co.* v. *Vancouver Breweries* [1934] A.C. 181 (P.C.), where it is justified by the necessity of rendering a transaction effective. Whereas it is in the public interest to protect the proprietary rights which a purchaser acquires by a contract

of sale, and so to prevent the vendor from derogating from his own grant, an employer has, generally speaking, no such proprietary interest as requires for its protection a prohibition against the mere competition of his employee. A master's trade secrets, the names of customers, etc., may properly be the subject of protection; but if the covenant is merely an embargo upon the energy, activities and labour of a citizen, the public interest coincides with the employee's own in condemning it (see *per* Lord Shaw in *Morris* v. *Saxelby*, *supra*). The prevention of competition *as such*, and of the use of the employee's own skill and knowledge, are not permissible, even though that skill and that knowledge were acquired in the master's business (*Morris* v. *Saxelby*, *per* Lord Parker at [1916] 1 A.C. 710). Lord Greene, M.R., observes, however, in *Routh* v. *Jones*, that the fact that a reasonable covenant may also operate to prevent competition does not mean that the covenant is a bad one.

It was argued for the plaintiffs throughout the recent case that the covenant was a composite one, severable into two or more separate covenants, one of which, if innocuous from the point of view of public policy, might stand even though another severed part might be unenforceable. Evershed, J., in the court below (see [1947] 1 All E.R. 179), had acceded to this argument so far as it divided the covenant into two parts, the separation occurring immediately before the words " nor accept nor fill." It seems doubtful whether the Court of Appeal would have allowed even this severance, but in the view they took none of the learned lords justices found it necessary to decide the point.

Evershed, J., appears to have dealt with the question almost solely as one of the construction of the document. He states a general proposition in this form: " As regards severability, a composite covenant may only be severed if, and to the extent that, on its true construction, the covenant in truth consists of two or more separate covenants." It is observable, however, that one school of judicial thought, of which the late Lord Blanesburgh, as Younger, L.J., was a member, considered in such cases a second question—assuming a covenant severable on its true construction, ought the court on grounds of policy to make the severance? See *Attwood* v. *Lamont* [1920] 3 K.B. 571, at p. 581; *British Reinforced Concrete Co.* v. *Schelff* [1921] 2 Ch. 563, at pp. 572–3. Advisers of both purchasers and masters taking covenants in restraint of trade would do well to bear this second question in mind.

In place of severance the legal question most prominent in the Court of Appeal was that of onus of proof. Evershed, J., had postulated that in all cases of master and servant the onus lies upon the master to prove both the existence of a subject-matter of contract entitled to protection, and that the covenant sought to be enforced is reasonably necessary for that protection. This point is discussed at some length by Lord Greene, who calls attention to a difference of judicial opinion concerning it. Lord Parker, in *Morris* v. *Saxelby*, *supra*, having interpreted earlier words of Lord Macnaghten as meaning that it is against the policy of the common law to enforce restraints of trade, except in cases where there are special circumstances to justify them, went on to say that the onus of proving such special circumstances must rest on the party alleging them, and that when once they were proved, the question whether those circumstances justified the restraint was one of law, for the decision of the judge. This *dictum* was adopted and put perhaps more broadly by Younger, L.J. (Atkin, L.J., concurring), in *Attwood* v. *Lamont* [1920] 3 K.B., at p. 587—" it is the covenantee . . . who has to show that the restriction . . . goes no further than is reasonable for the protection of his business." To this view all three members of the Court of Appeal subscribe in preference to a *dictum* in the opposite sense in Lord Birkenhead's speech in the later case of *Fitch* v. *Dewes* [1921] 2 A.C. 158, which was pressed upon them by counsel for the plaintiffs. The paucity of evidence, as Lord Greene says, thus penalised the plaintiffs and not the defendant.

A case such as the present will be scrutinised by the practitioner as much for any hint it may offer as to the current trend of judicial opinion on a matter on which it has shifted so noticeably in the past, as for an exposition of legal principles. The Master of the Rolls preserves, if one may say so, a certain detachment from any controversial expression of opinion. But Evershed, J., gives a clear indication of his view: " I confess I have not arrived at my conclusion without some regret, for I take the view that a man ought to honour his part of a bargain, the corresponding obligations of which he expects to be observed by the other party, and it is no part of the duty of the court in such cases to relieve an obligor of bad bargains merely because they are bad. But . . . it is to be remembered that in contracts between a master and servant, the latter is necessarily at a disadvantage, and in cases of covenants in restraint of trade on the part of servants, there is, I think, an obligation on the part of masters to be scrupulous to see that such covenants are framed with precision and care and do not attempt exaction beyond the requirements of propriety."

COMPENSATION FOR COMPULSORY PURCHASE OF LAND—II

(Concluded from p. 512)

THE modifications introduced by the Town and Country Planning Act, 1947, in returning to the standard of current market value as the basis of compensation for compulsory purchase by Government Departments and local authorities, were summarised in the first part of this article, and the first two were considered in some detail. It remains to consider more fully modifications (3) and (4) therein referred to.

(3) The exclusion from compensation, by s. 52 of the Act, of the special value nowadays of vacant possession is perhaps the most controversial of the new compensation provisions.

In the first place it must be noted that the section does not apply to—

(*a*) Agricultural land or buildings as defined by the Rating and Valuation (Apportionment) Act, 1928, or to a house used as a dwelling-house by a person who is primarily engaged in carrying out or directing agricultural operations on land in the neighbourhood of the house. Any special value attributable to ability to give vacant possession in the case of such property must be included in the assessment. This introduces into the assessment questions as to the activities of individuals which may well give rise to dispute. It does not appear that the house need form part of a holding and, therefore, for example, if a pair of semi-detached houses in a country village the subject of a compulsory purchase order for, say, a highway improvement, are owned and occupied the one by a farm bailiff to a neighbouring estate and the other by a shopkeeper, the bailiff will receive considerably more compensation than the shopkeeper. It is submitted that the value of property should not be affected by the particular occupation of the owner-occupier not carried on upon it.

(*b*) Dwelling-houses subject to the Rent Restrictions Acts, where any person is in possession by virtue of a tenancy or the protection of the Acts. In these cases there is in any event really no special value, except, possibly, where the house is likely to fall vacant, for the owner is not in a position to give vacant possession, and it will be noticed that when he does come into possession the section applies.

Subject to the foregoing, the section applies to interests in respect of which notices to treat are served before 1st January, 1954, and the owner is in a position to give vacant possession immediately or at any time before that date. In these cases the value is to be calculated as if the interest was subject to a lease beginning at the date of the notice to treat or, if then subject to a lease expiring before 1st January,

1954, from the expiry of this lease and ending on 1st January, 1954, or, if a leasehold interest ending before then, ending the day before the expiry of the lease. The terms of the notional lease are—

(*a*) tenant to pay usual tenant's rates and taxes ;

(*b*) tenant to pay cost of repairs, insurance and other expenses to maintain the property as at the date of the notice to treat ;

(*c*) rent to be a sum equal to 5 per cent. of the capital value, or the rent which a tenant might reasonably be expected to pay on these conditions, whichever is the less.

It seems that the special value is not entirely eliminated, as the capital on which the rent of the notional lease is to be based is the capital value of the freehold interest calculated without reference to this section, i.e., the capital value will include the special value attributable to vacant possession. Similarly, owing to the scarcity of vacant property, a tenant might well be reasonably expected to pay a rent which takes into account the scarcity and is, therefore, higher than he would pay in normal times. Where, however, the property is a dwelling-house subject to the Rent Restrictions Acts it may be that the rent must be calculated having in mind the provisions of those Acts, and in such a case the special value may well be very largely eliminated.

The net effect seems to be that with the possible exception of dwelling-houses subject to the Rent Restrictions Acts the owner who is in a position to give vacant possession will receive compensation at a figure somewhere above the market value without vacant possession and somewhere below the market value with vacant possession.

We have, therefore, an owner-occupier whose property has been compulsorily purchased and who will receive compensation, through the operation of the last-mentioned section, at a less figure than the current market value with vacant possession. To obtain alternative accommodation with vacant possession he will have to pay the full market value and it may, therefore, be rightly contended that such a person will suffer undue hardship. On the other hand, there are certain provisions, which we must now examine, which may reduce this hardship. They are to be found in ss. 19 (6) and 30 of the Town and Country Planning Act, 1944, as incorporated in the compulsory purchase provisions of the new Act by s. 44. It must, however, be emphasised that the provisions we are now considering are only applicable to purchase for the purposes of the new Act and not for the purposes of any other statute. In other words, they are part of the authorising enactment and not of the assessment of compensation enactment. Consequently in every case the Act authorising the particular compulsory purchase must be looked at to see whether any such special provision is made. Somewhat similar provisions are, for instance, contained in the Housing Act, 1936, in respect of compulsory purchase under that Act.

Section 19 (6) of the 1944 Act applies only in the case of land comprised in or contiguous or adjacent to an area defined by a development plan as an area of comprehensive development, and requires the local authority in disposing of the land to secure, so far as may be practicable, to persons who were living or carrying on business or other activities upon the land, an opportunity to obtain accommodation on the land suitable to their reasonable requirements on terms settled with due regard to the price at which such land has been acquired from them. This subsection is framed in very guarded language. Section 30 is more satisfactory, for it provides (subs. (1)) that where the carrying out of redevelopment on land acquired by a local authority (not, it will be noticed, by Government Departments or statutory undertakers) for the purposes of the Bill involves the displacement of persons residing thereon it shall be the duty of the authority, so far as there is not other residential accommodation suitable to the reasonable requirements of these persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacements. It further provides (subs. (5)) that a local authority, the Central Land Board, or a Minister, may pay to displaced persons reasonable removal expenses and, in the case of a person carrying on business in a building from which he is displaced, a reasonable allowance for disturbance.

Finally, in order that the special value which s. 52 eliminates may not be claimed in another way for disturbance, the section specifically provides in effect that it shall not be claimed as such.

(4) (*a*) Section 53 deals with compensation for compulsory purchase of war-damaged land which would, but for the compulsory purchase, have attracted a cost of works payment. No special provision is made for total-loss properties attracting a value payment, and in such cases the compensation payable for the compulsory purchase will be assessed on the current restricted-use value of the property as it exists at the date of service of the notice to treat, which will often be as a bare site only, the owner receiving the value payment in the usual way.

Where the property only attracts a cost of works payment it is to be assessed for purposes of compensation for compulsory purchase as if the whole of the war damage had been made good before the date of the notice to treat, and the right to any payments under the War Damage Act will vest in the acquiring authority.

(*b*) Compensation for the compulsory purchase of requisitioned land is dealt with by s. 54.

There are three points on which it is necessary to make special provision in the case of requisitioned land :—

(i) while the property is subject to requisition it could not normally be said that the owner's interest carries with it the right to vacant possession, as the date at which the property will be derequisitioned is an unknown factor ;

(ii) during the requisition the requisitioning authority may have done something on the land which enhances its value, e.g., the carrying out of improvements or the erection of buildings ;

(iii) some action of the requisitioning authority may have depreciated the value.

The section provides that, subject to Pt. VIII of the Requisitioned Land and War Works Act, 1945, compensation shall be assessed as if the land were not requisitioned land. It deals with point (i) by providing that, notwithstanding the requisitioning, the owner's interest shall be deemed to carry the right to vacant possession if it would do so apart from the requisitioning. Part VIII of the 1945 Act covers points (ii) and (iii) by requiring an adjustment to be made in the compensation to offset any increase or diminution of the compensation attributable to damage occurring or work done during the requisitioning period. Thus on the compulsory purchase the owner will not be entitled to have included in the compensation payable to him by the acquiring authority any enhanced value, including any prospective development value arising from such building by virtue of the excepted classes in Sched. III to the 1947 Act, due to improvements or buildings carried out or erected by the requisitioning authority, unless he has paid for them. In effect the owner will receive current restricted-use value, subject to adjustment under Pt. VIII of the 1945 Act in respect of any increase or diminution in value due to the requisitioning, and bearing in mind any payment of or right to claim compensation under the Compensation (Defence) Act, 1939, and less any development value arising from the excepted classes in Sched. III in respect of works or buildings for which the owner has not paid (e.g., where a house has been erected by and at the expense of the requisitioning authority, the owner will not be entitled to the value of the house or to any value arising from the fact that he might increase its cubic content by not more than one-tenth without payment of a development charge). Truly a complicated assessment.

Injurious Affection

So far we have dealt only with compensation for compulsory purchase of an interest in land, but the 1944 Act applied the 1939 ceiling to other forms of compensation also, namely :—

(*a*) compensation for severance and injurious affection in respect of land from which the land acquired has been severed; and

(*b*) compensation under s. 68 of the Lands Clauses Consolidation Act, 1845, for land injuriously affected by the execution of works on land acquired (it is not necessary here that the land should have been severed).

In these cases, too, the 1939 ceiling will cease to have effect. Similarly, any compensation payable under the new Act for refusal or conditional grant of planning permission in certain cases (but in this case development value in respect of class (1) and the new class relating to the use of one dwelling-house as two or more in Sched. III is excluded), or where a conforming use or building is ordered to be discontinued, made subject to conditions, removed or altered (for these cases, see 91 SOL. J. 168 and 200), will be assessed by reference to the rules set out in s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, and not on the 1939 basis. The 1939 basis is also automatically abandoned where an authority is required to purchase land on refusal of planning permission in certain cases (91 SOL. J. 168 and 199).

CRIMINAL LAW AND PRACTICE

EVIDENCE OF CHILDREN

AN interesting suggestion was made in a letter to *The Times* of 26th August by the Rev. D. E. J. Anthony, of Malmesbury, in regard to the procedure in cases of criminal assault on very young children where identification of the offender is established beyond doubt.

He wrote that apparently under existing procedure the parents of the child, though the latter may be only four years of age, are required to produce him or her, first at the local police court, and subsequently, if the case is so committed, at the assize court. He asked if it was not possible to devise a method of securing the child's evidence which will satisfy both magistrates and judge, and spare the child victim the ordeal of confronting the offender on two separate occasions.

Judges can always be trusted to cause the least pain and embarrassment to witnesses who suffer from any disability, including that of youth, but there are obviously cases in which it is impossible to dispense with producing a witness on two separate occasions. In such cases as those to which the reverend writer to *The Times* refers the evidence of the child is material to the substance of the offence as well as to identification, and even if it is material only to identification, it is essential to the administration of elementary justice that the accused should be given the fullest opportunity of cross-examining even this sort of evidence when it is tendered against him.

There is ample authority for the proposition that extreme youth may render a witness incompetent to give evidence. But a child's testimony against any person for any offence may be received by a court even where the witness does not, in the opinion of the court, understand the nature of an oath. It is not then given on oath, it being considered sufficient if, in the opinion of the court, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth (s. 38 (1) of the Children and Young Persons Act, 1933). His evidence, though not given on oath, will, when reduced to writing, be deemed to be a deposition within the meaning of the Indictable Offences Act, 1848. Such evidence must, however, be corroborated by some other material evidence (s. 38 (1) of the 1933 Act).

Moreover, there are quite a number of offences against the person (murder or manslaughter of a child or young person, infanticide, offences against ss. 27, 55 or 56 of the Offences against the Person Act, 1861, and against ss. 5, 42, 43, 52 or 62 of that Act against a child or young person, or under the Criminal Law Amendment Act, 1885, offences under the Punishment of Incest Act, 1908, in respect of a child or young person, offences against ss. 1, 2, 3, 4, 11 or 23 of the Children and Young Persons Act, 1933, as well as all other offences involving bodily injury to a child or young person), in which if the court is satisfied that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child or young person (s. 41 of the 1933 Act, and the First Schedule).

Under ss. 42 and 43 of the 1933 Act, a deposition of a child may be used by the court instead of the child's actual evidence where it appears on medical evidence that attendance would involve serious danger to the life or health of the child.

The most important safeguard with regard to the sometimes necessary exposure of children of tender years to the atmosphere of a criminal court is that contained in s. 37 of the Children and Young Persons Act, 1933, which provides that where, in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, a person who in the opinion of the court is a child or young person is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness.

The section also provides that this does not affect the existing law as to hearing proceedings *in camera*, and in this connection it must be borne in mind that justices conducting preliminary hearings of charges of indictable offences are not deemed to sit in an open court, and may order that no person shall have access to or be or remain in the room or even in the building without their consent or permission, if the ends of justice will be best answered by so doing (s. 19 of the Indictable Offences Act, 1848).

It seems difficult to frame any further legislative safeguards which would not materially reduce the effectiveness of the administration of criminal justice.

COMPANY LAW AND PRACTICE

POLLS AT GENERAL MEETINGS

SECTION 117 (4) and (5) of the Companies Act, 1929, contains provisions with regard to the number of members required for the demand of a poll on a special or an extraordinary resolution and as to computing the majority on a poll for the purposes of such a resolution, but is otherwise silent on the question of polls. Generally speaking, the demanding and taking of a poll are matters regulated by the articles (see cll. 50 to 53 of Table A), but the new Companies Act (which, it will be remembered, though passed is not yet in force) contains provisions on the subject which override the articles. Section 4 of that Act in effect renders invalid any provision in the articles which excludes the right to demand a poll on any question except the election of the chairman or the adjournment of the meeting, or any provision which requires for the demand for a poll more than the following minima :—

(1) Five members having the right to vote at the meeting, or

(2) A member or members representing not less than one-tenth of the total voting rights of all the members entitled to vote at the meeting, or

(3) A member or members holding shares conferring a right to vote on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

In view of these new provisions s. 117 (4) of the 1929 Act is to be repealed.

The new Act also provides that the instrument appointing a proxy is to be deemed to confer authority to demand, or join in demanding, a poll, a point on which, in the absence of express provision in the articles, there has hitherto been some doubt. Another question of some difficulty, also resolved by the new Act, is whether on a poll a shareholder can use some of his votes for and some against the resolution: the question at first sight does not appear to be a very practical one, but in regard to a shareholder who holds different blocks of shares as trustee or nominee for different persons and who receives varying instructions as to the way in which he is to vote on a particular resolution, the question may be of some moment. What the new Act provides is that on a poll a member need not if he votes use all his votes or cast all the votes he uses in the same way.

These statutory provisions relative to a poll still leave a large field open to the articles: it is for the articles to provide what number of members can demand a poll, though in this connection such provisions must conform with the statutory minima above referred to, and if the articles are silent on the matter it seems that any shareholder has a common-law right to demand a poll. (The new Act, it should be observed, does not confer a right to demand a poll but restricts the matters on which a poll may be excluded, and the number of members which the articles may fix as requisite for the demand.) It is for the articles also to provide when the demand for a poll is to be made and when and how the poll is to be taken. Usually the articles provide that the time and place for the taking of the poll are to be at the determination of the chairman: if so, the poll can be taken then and there. In the absence of provisions expressly or impliedly authorising the holding of a poll at the meeting at which it is demanded, it has been said that it should not be taken then and there but that an opportunity should be given for members not present to vote at the poll (see *Re Horbury Bridge Coy.* (1879), 11 Ch. D. 109; *Re Chillington* (1885), 29 Ch. D. 159).

I do not know how often in practice when a poll is demanded it is found necessary to defer the taking of it until a later day. Taking a poll involves, I suppose, recording the names of the shareholders voting either in person or by proxy and the way in which they cast their votes, and no doubt this can usually only be satisfactorily done by each voter signing his name either for or against the resolution: the number of votes to which he is entitled will have to be verified by reference to the register of members, the aggregate of the votes given for and against calculated and the validity of proxies checked, if this has not already been done. All this takes time, and though it can no doubt be carried out fairly quickly at a meeting attended by few members or their proxies it might hardly be practicable at a large meeting unless the demand for a poll has been anticipated and preparations made in advance. If not practicable, then under the usual articles the chairman can fix another day for the holding of the poll. As the poll in that case is regarded as part of the proceedings for the meeting it would not appear necessary, unless the articles so require, to give notice, except at the meeting, of the taking of the poll, though there is no reason why members not present at the meeting should not vote at the poll. The chairman, when fixing a day for the holding of a poll, should fix also the hours of polling, otherwise there may be some difficulty in deciding when the poll can properly be closed. A point of some importance is that, unless the articles provide otherwise, a poll cannot be taken by sending voting papers to the shareholders to be returned by post, the reason being that under usual articles voting by post is not contemplated and shareholders or their proxies must attend and give the votes personally (*McMillan* v. *Le Roi Mining Coy.* [1906] 1 Ch. 331). It is rare to find articles providing that a poll may be taken by voting papers, though such a provision might in these times be of considerable practical value. Another point to be noted is that if the articles require proxies to be lodged a specified number of days before a meeting, they cannot be effectively lodged after the meeting but the specified number of days before the poll is taken, for the taking of a poll is not a meeting but a continuation of the meeting at which the poll was demanded (*Shaw* v. *Tati Concessions, Ltd.* [1913] 1 Ch. 292). For the same reason, if articles require notice of revocation of a proxy to be received before the meeting, a revocation of the proxy between the meeting and the taking of the poll is inoperative (*Spiller* v. *Mayo* [1926] W.N. 78).

Sometimes it may be practicable to take the poll at the meeting at which it is demanded but not there and then to work out the result: there is no objection in such a case to declaring the result subsequently.

A CONVEYANCER'S DIARY

FINANCE ACT, 1947—IV

Imposition of further legacy duty and succession duty

The nature of the further duty imposed by the Act and its incidence having been outlined in the preceding weeks, it is only necessary now to comment shortly on some provisions of the Act consequential on the imposition of the further duty. Section 49 (4) provides that, in general, where the duty payable under the existing law was paid, before the 16th April, 1947, on the capital value of property given for successive interests to persons all chargeable with the same rate of duty, the further duty now chargeable shall be accounted for and paid by the persons who would have been accountable under the existing law, had they not been exempt by reason of the provisions applicable in cases where all persons having successive interests in the same benefit are chargeable with the same rate of duty. Section 49 (5) protects the purchaser or mortgagee of an interest in expectancy sold or mortgaged before the 16th April, 1947, from payment of any further duty. This subsection is important, but space at present forbids giving it the treatment it deserves.

Finally, s. 49 (6) (*b*) defines the circumstances in which a succession arises for the purposes of this part of the Act:—

> "(*b*) a succession shall be deemed to arise on the happening of the death by reason of which the successor, or any person in his right and on his behalf, becomes entitled in possession to the succession or to the receipt of the income and profits thereof."

This definition is in identical terms with s. 24 of the Finance Act, 1925, and so perpetuates the distinction between the date on which a succession arises and the date on which it may have been conferred. This distinction, although inconvenient, is not new and requires no comment here.

Having dealt with the further duty imposed by the Act it is time to turn to a more cheerful topic.

Exemptions from legacy duty and succession duty conferred by the Act

These fall under three main heads—(1) Exemption in the case of small estates; (2) Exemption in the case of small legacies; and (3) Exemption by reason of consanguinity.

Exemption in the case of small estates.—Section 16 (3) of the Finance Act, 1894 (for which a new subsection was introduced by the Finance Act, 1946) has been further amended by s. 50 (1) of the Act of 1947, so that it now reads as follows:—

> "(3) Where the net value of the property, real and personal, in respect of which estate duty would, if estate duty were payable in respect of estates however small the principal value thereof, be payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed £2,000, such property, for the purpose of estate duty, shall not be aggregated with any other property, but shall form an estate by itself and the legacy and succession duties shall not be payable under

the will or intestacy of the deceased in respect of that estate."

Section 13 (2) of the Finance Act, 1914 (which makes consequential provision for reducing the amount of legacy duty and succession duty payable where the value of the free estate only slightly exceeds £1,000) has also been amended by the substitution of the figure £2,000 for £1,000. These provisions have effect in the case of all persons dying on or after the 16th April, 1947. This exemption is very welcome, not only for the relief it confers, but also for bringing the law relating to legacy duty and succession duty into line with that relating to estate duty.

Exemption in the case of small legacies, etc.—Section 50 (2) (*a*) exempts completely from all legacy duty and succession duty any legacy or succession which does not, together with any other legacy or succession derived by the same person from the same testator, intestate or predecessor or passing to that person on the same death, exceed £100 in value.

Exemption by reason of consanguinity.—The exemptions from legacy duty and succession duty of legacies and successions to infant children of not more than £2,000 in value conferred by s. 58 (2) (*c*) of the Finance (1909–10) Act, 1910, is extended by the removal of the qualification as to infancy (s. 50 (2) (*b*) of the Act of 1947). All children, whatever their age, can now qualify for this exemption.

These last two exemptions operate not only in the case of persons dying after the 16th April, 1947, but also whenever further duty under the Act would, but for these express exemptions, have been chargeable, e.g., in the case of a settled legacy where the testator dies before the 16th April, 1947, and the life tenant dies on or after that date. If the benefit accruing to the ultimate taker in such a case does not exceed £100 in value, or £2,000 if the ultimate taker is a child of the testator and estate duty has been paid, no duty will be payable on the benefit so accruing. Section 50 (3) further provides that where a legacy or succession would have been exempt from duty under the foregoing provisions if the limit of value of £100 or £2,000 (as the case may be) had not been exceeded, the amount of duty payable on such legacy or succession shall not be greater than the amount by which that limit is exceeded. This concession is made applicable not only to legacies and successions expressly exempted from duty by the Act by reason of their small value or consanguinity, but also to certain legacies and successions subject to the 1 per cent. duty and exempted by s. 58 (2) of the Act of 1910. The last-mentioned class of benefits, however, only fall within the exemption if they are *prima facie* charged with the further duty under the Act of 1947, i.e., in the case of persons dying on or after the 16th April, 1947, or in the case of a legacy derived from a testator or intestate dying before that date, or of a succession arising before that date, if such legacy or succession is within the terms of s. 49 (2) of the Act of 1947. The scope of that subsection has already been explained.

In leaving this subject, which has provided matter for comment for several weeks past, I should like to say that my remarks on the Finance Act, 1947, are not intended to be exhaustive. For that it will be necessary to wait for the new editions of the recognised books on death duties. If these notes have helped to shed some light on the main changes introduced by the Act in so far as they may be of especial interest to the conveyancer, and on the complexities involved in some of these changes, they will have served their purpose.

LANDLORD AND TENANT NOTEBOOK

PARTNERSHIP AND RENEWAL OF LEASES—I

PROBLEMS arising out of partnership between tenants are apt to be considered material for text-books on the law of partnership by those who write books on the law of landlord and tenant—and *vice versa*. The question whether one of two partners can claim the grant of a new lease under the Landlord and Tenant Act, 1927, s. 5, has not yet come before the courts; if and when it does, no doubt reference will be made to a number of cases, including *Finch* v. *Underwood* (1876), 2 Ch. D. 310 (C.A.), the authority of which it may not be easy to determine. Some of them concern the applicability of covenants against alienation to circumstances surrounding dissolution of partnership, others arise directly out of attempts to exercise a (contractual) right of renewal; and it is useful to consider the first kind as well as the second.

Varley v. *Coppard* (1872), L.R. 7 C.P. 505, was a case in which the plaintiff had granted a six-year lease or underlease to an individual, who had covenanted that he, his executors, administrators and assigns, would not assign without the plaintiff's consent. The grantee assigned, with the necessary consent, to two individuals; and then one of the latter assigned his interest to the other without consent. The action was brought against the assignor. Willes and Keating, JJ., held that the covenant had been broken, for it meant that neither of the two might assign the whole or any part of his interest; were it not so, each might assign, without consent, to a third party.

Then in *Finch* v. *Underwood* (1876), 2 Ch. D. 310 (C.A.), the question arose whether the plaintiff, one of two partners, was entitled to exercise a right to a new lease which was conditional on covenants having been observed; a finding that one covenant had been broken was enough to dispose of the claim, but all three lords justices considered the other issue. The right was given in a landlord's covenant, he undertaking to grant a fresh lease subject to the same covenants as that contained in the old one to "the tenants, their executors and administrators." All the tenants' covenants in the original lease had been joint and several. During its currency one partner had assigned his interest to the other; but if this was a breach of one of the covenants, it had been waived. This, however, was held not to help the plaintiff; the agreement was in terms to grant a lease to two persons. All three members of the court referred to the hypothetical question, presumably raised in argument, what would be the position if one of the partners had died, but declined to express an opinion on the point.

But in *Bristol Corporation* v. *Westcott* (1879), 12 Ch. D. 461 (C.A.), a somewhat similar question came before the court in a different way, the action being brought to decide the allocation of money paid on compulsory acquisition and the issue being between two defendants. One of these had granted a lease of the premises to her co-defendant and another party, described in that lease as co-partners; in this the lessees had covenanted for themselves, their heirs, executors and administrators and assigns, and each of them for himself, his heirs, etc., not to assign, underlet or part with the possession of the premises to any person or persons without her consent, and there was a proviso for re-entry on breach. During the term the lessees agreed in writing to dissolve partnership; by a second memorandum they agreed to execute a proper deed of dissolution under which one of them would assign to the other (who subsequently became the landlord's co-defendant) all his estate and interest in any leasehold premises in which the business was carried on; and, finally, the outgoing partner signed a document declaring that he had given sole possession of the premises to the other. No assignment was in fact executed, but the landlord commenced a forfeiture action alleging breaches of the covenant, which she discontinued when the corporation took possession. The result turned upon the question whether there had been a parting with possession within the meaning of the covenant.

It was held both by the Vice-Chancellor and the Court of Appeal that there had not. The reasoning is interesting. Bacon, V.-C., pointed out that each partner had had full possession; if one had had an apoplectic fit so that he could not enter the premises, or if his commercial engagements had compelled his absence, it would be absurd to say that he had parted with possession. What had happened was that he had withdrawn. On appeal, Jessel, M.R., observed that the reference to executors and administrators alone showed that

the covenant was not to be construed literally, but must mean those of the survivor; and this justified reading "to any person or persons" as limited to strangers, just as would have been the case if the grantee had been an individual; Brett and Cotton, L.JJ., shared this view, the latter concluding with: "I think its proper construction is that the lessees are not to give possession to anyone who has not already been admitted as tenant or approved as a tenant by the lessor."

It will be observed that at this stage a distinction suggests itself, that between the position when the original grant was to one tenant or to two tenants; in the former case, a landlord would not be able to argue, when approached by one of two joint assignees, that he was entitled to look to two persons for the payment of rent and observance of other obligations. This suggestion was disposed of by *Langton* v. *Henson* (1905), 92 L.T. 805 (C.A.), the effect of which I will go into next week.

TO-DAY AND YESTERDAY

LOOKING BACK

THE last years of the 17th century seem to have been marked by two notable features in the world of crime, one, the striking popularity of the enterprise of clipping the gold and silver coinage and the other the remarkable prominence of the gentleman criminal. Two letters in the Portledge Papers in 1695 illustrate the situation. One dated 29th September says: "There are a great number of clippers every day siezed by the occasion of one lately taken who hath detected the confederacy. *Inter alios* one Saunders's Chamber was broken open in the Inner Temple where they found £50 of money clipped and all the engines and instruments for doing it but he, not being within, and since, it's said, one Berry, a gentleman's son of good quality of the Temple, is taken into custody for the like crime and it's said Saunders is a Somersetshire gentleman's son." The other letter dated 4th October says: "There having been a robbery lately committed by some highwaymen in Dorsetshire, who took from the King's collectors there £700 near Blandford, it seems the criminals are since detected and near all the money found and some of the persons taken into custody. One of the persons in the confederacy was a knight's son of that county." A year later it was the same story: "A great many clippers and coiners are apprehended and mills siezed" and "Captain Wintour, a gentleman of about £800 a year in Gloucestershire and several others his accomplices" were "wanted" for this offence.

WELBECK ABBEY

THE recent sale at Welbeck Abbey of some of the Duke of Portland's 17th and 18th century furniture marks the fading of many ancient glories, but nigh on seventy years after the death of the fifth Duke in 1879 mention of Welbeck still conjures up most readily the memory of his eccentric personality and the fantastic litigation, arising out of a claim to his estate, which for years and years blundered on through practically every court of justice in England. The credulity on which it was based was certainly fed by the Duke's admitted eccentricity. He never mixed in society. He would not allow his solicitors an interview. He wore a top hat approaching two feet in height. He never went out without a quaint old-fashioned umbrella and, no matter how hot the weather, he always carried a loose coat slung over his arm. His trousers were tied, navvy fashion, a few inches from the bottom, with string. As he drove through the villages on his estate he threw the children handfuls of silver. He had a special carriage closed from observation and hung round with heavy curtains. His diet was simple, no butcher's meat but only half a chicken at each of his two meals. He made fine collections of pictures and one day with his own hands made a bonfire of several thousand pounds' worth which he considered below the standard of his gallery. He employed hundreds of workmen to tunnel a whole underground domain, vast rooms and even wide carriage ways, beneath Welbeck, and all the time he shunned personal contacts by every device at his disposal.

FANTASTIC CLAIM

Now the whole basis of the litigation which followed his death was an allegation that this immeasurably wealthy nobleman was one and the same person as Mr. Thomas Druce of the Baker Street Bazaar, that for years he had led a second life as a London tradesman and that in 1864 he had tired of the masquerade, fabricating a mock death and a mock funeral for his *alter ego*. The trouble started first when Mrs. Annie Druce, widow of Thomas Druce's son Walter, made this allegation and applied for an exhumation to prove that the coffin of her father-in-law in fact contained no body. As neither at Bow Street nor in the House of Lords could she secure attention she launched her claim for exhumation in the Consistory Court in 1898. The Druce family opposed her with might and main and by the end of the year the battle ground had been extended to take in the Queen's Bench Division, the Probate Division and the Court of Appeal. Checked by the end of the year, she re-opened the campaign in the City of London Court in 1900, the Mayor's Court, and so back again to the Probate Division. "I want my income £1,000 a day, 1,000 sovereigns; I am very hard up, you know, and I want my money—*my* money, you know." In 1903 her mental state required her to be put under restraint. Then came on the scene George Hollamby Druce, grandson of Thomas by an earlier marriage. He took over the claim in a big way and instituted a prosecution for perjury against Herbert Druce, a son of Thomas who had sworn in the course of the earlier proceedings that he had seen his father in his coffin. The case at Marylebone Police Court in 1907 was sensational. They resulted in the opening of the coffin and, of course, the body was found within. George Hollamby Druce had refrained from saying anything that could bring him within reach of the criminal law but his witnesses at Marylebone brought down the curtain on the farce with appearances at the Central Criminal Court where they received their reward.

COUNTY COURT LETTER

Claims to Furniture

IN *Attwood* v. *Attwood*, at Stourbridge County Court, a husband claimed the return of certain goods in the possession of his wife. The plaintiff's case was that he had bought the articles under a hire-purchase agreement in his own name. He had made certain payments, but some instalments remained unpaid. As the purchase had not been completed, the furniture belonged neither to the husband nor the wife. The wife's case was that the furniture was a gift to her. During her husband's absence in the Army, she had paid some instalments. These were admittedly paid in the husband's name. His Honour Judge Langman was not satisfied that the furniture was a gift to the wife. An order was made for its delivery-up to the husband in fourteen days.

IN *Grummitt* v. *Grummitt and Hills*, at Grantham County Court, a husband claimed from his wife and her parents the return of certain furniture, and £35 money had and received to his use. His parents-in-law counter-claimed £63 1s. 6d. The parties were married in March, 1944, and the husband's case was that he withdrew £30 from the Post Office Savings Bank. He gave this sum, and a further £10, to his mother-in-law, who bought furniture for more than £40. She paid the excess, but did not ask to be repaid prior to the case. The husband, after the marriage, had saved £45, of which his wife spent £10 on linoleum. He told her to pay the amount due to her mother and to spend the balance on herself. A separation occurred in June, 1946, owing to the wife's fondness for pleasure and amusements. In August all the furniture was removed, except a kitchen table, a bed, pillows and blankets. The husband desired a reconciliation. The defence was a denial that the husband had handed over £40. The money in the house never exceeded £20, which was saved out of the wife's earnings. The furniture had cost £43 11s. 6d., which sum had been lent to the wife by her mother. His Honour Judge Shove accepted the plaintiff's version. An order was made against the parents-in-law to deliver up the furniture in fourteen days. Judgment was given against the wife for £23 1s. 6d., and a declaration was made under the Married Women's Property Act that the furniture was the husband's. He was awarded costs on the claim and counter-claim.

Dwelling-house as Business Premises

IN *The Dean and Chapter* v. *Harlow*, at Canterbury County Court, the claim was for possession of a private dwelling-house, which the defendant had never lived in. He was using it as a furniture store, whereas it could be let to a family to occupy. The defendant's case was that he would live in the house if it was put into good condition. Neither the archbishop nor the dean wished to occupy the house, and the defendant, having paid his rent, had a right to keep the house. His Honour Judge Clements made an order for possession in one month.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88–90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Assent to " A, B and C in fee simple "—EFFECT

Q. Freehold property is devised to A, B and C equally. Subsequently the executor assents to the property vesting in " A, B and C in fee simple." A and B are now deceased. Is C a surviving joint tenant in view of the form of assent, and can he make title alone ?

A. The devise created a tenancy in common (*Lewen* v. *Dodd* (1599), Cro. Eliz. 443; *Denn d. Gaskin* v. *Gaskin*, Cowp. 657; and see " Tudor's Leading Cases on Real Property, etc.," 4th ed., p. 283, where these cases are cited). The assent appears to have created a joint tenancy (at law and in equity) but wrongly. In our opinion C is not the survivor of joint tenants who is solely and beneficially interested. Whether a purchaser, who was in ignorance of the contents of the material will, could safely take title from C, in the guise of the survivor of joint tenants solely and beneficially interested, in reliance upon Ad. of E.A., 1925, s. 36 (7) is, we think, doubtful, for in view of the unusual form of the assent (which creates no express trust for sale or declaration of trust of the proceeds) it may be that he ought to go behind the assent (*Re Duce and Boots Cash Chemists (Southern), Ltd.* [1937] Ch. 642; 81 SOL. J. 651). We express the opinion that C should make title by way of the statutory trust for sale, and that a purchaser would be ill-advised to accept title in any other manner.

Furnished letting

Q. A agrees to rent a furnished house from B at a rent far above the rateable value of the premises. Before A enters into possession, he asks B to remove the furniture already in the house to make way for his own furniture. This B agrees to do. A for some time pays the rent originally arranged. Is this a furnished house for the purposes of the Furnished Houses (Rent Control) Act, 1946, and can A apply to the appropriate rent tribunal for a reduction in the rent ?

A. In view of the definition in s. 2 (1) of the Act, the premises are a furnished house, and A can apply to the rent tribunal for a reduction

Enforcement of Order

Q. By the case of *In re Kinseth* [1947] 1 All E.R. 201, it was decided that a married woman could claim maintenance for herself up to the sum of £2 per week under the Summary Jurisdiction Act, 1895, and could also, in the same proceedings, claim under the Guardianship of Infants Act, 1925, for support of her children at the rate of £1 per week for each child. Prior to the hearing of this case it was thought that a married woman must claim for the support of her children under the Summary Jurisdiction Acts and could not issue two summonses, one under the Summary Jurisdiction Act, 1895, and the other under the Guardianship of Infants Act, 1925. In a recent matrimonial case I followed the above procedure, but it was pointed out to me by the clerk of the court that orders made under the Guardianship of Infants Act, 1925, could only be enforced by civil proceedings, namely in the county court by judgment summons, etc. This to me appears to be incorrect, on the general ground that no court should make an order which it is unable personally to enforce.

A. Under the Guardianship of Infants Act, 1925, s. 7 (4), an order of a magistrate is enforced in like manner as an order for the payment of a civil debt recoverable summarily, i.e., in accordance with the Summary Jurisdiction Act, 1879, s. 35, proviso (2). The proceedings can be taken before the magistrates, but are governed by the same procedure as in the county court.

Occupiers of flat

Q. A country doctor who has a large house has converted the top floor into a separate flat with bathroom, kitchen, etc. He requires a responsible person about the house to answer telephones when he is out and to act as caretaker when he is away. He proposes to allow a married couple to occupy the flat rent-free in return for rendering the services above mentioned. No wages are to be paid. (1) Will the occupants of the flat become tenants under the Rent Restrictions Acts if no rent is charged and the doctor pays the rates ? (2) Will the occupants become tenants if no rent is charged but the occupants are required to pay a proportion of the rates ?

A. (1) No. See *Ecclesiastical Commissioners* v. *Hilder* (1920), 36 T.L.R. 771. (2) No. The payment of a proportion of the rates would have none of the attributes of a rent, e.g., no power to distrain.

REVIEWS

County Court Notebook. By ERSKINE POLLOCK, LL.B., Solicitor. Third Edition. 1947. London: The Solicitors' Law Stationery Society, Ltd. 4s. net.

The third edition of this useful publication has been written, like its predecessors, by a practising solicitor for practising solicitors. The practical features of a thumb-index and blank pages for the user's own notes have been retained. The addition of a number of notes and headings has resulted in an enlargement of the *Notebook*, which is eminently fitted to save the time and patience of the busy solicitor and his clerk. The relevant sections, orders and rules in the " Practice " may readily be ascertained from the references given in the margin. This handy volume may be safely commended as a short cut to knowledge.

Privacy and the Press. *Lea* v. *Justice of the Peace, Ltd. and R. J. Acford, Ltd.* Edited, with an Introduction, by H. MONTGOMERY HYDE, of the Middle Temple, Barrister-at-Law. 1947. London: Butterworth & Co. (Publishers), Ltd. 6s. net.

This has been a pretty full year for interesting libel actions, but none is of such public and general interest as *Lea* v. *Justice of the Peace, Ltd.*, which might well be called the leading case of the Press photographer and which is the subject of this book. The photographer had slipped uninvited into a society wedding reception in a private house. Suddenly, he took a flashlight photograph of the bride and bridegroom and immediately the bridegroom struck him and smashed his camera. Subsequent police court proceedings went all in his favour and were widely reported in the national Press. The bridegroom was fined and ordered to pay compensation for the damage occasioned by his violence, which the magistrate characterised as cowardly and ungentlemanly. Only in the relatively secluded columns of a professional legal journal appeared a severe comment on the photographer's intrusion, and the observation that the adjectives used in the police court would apply more aptly to him than to the bridegroom. Emboldened by his previous success, the photographer proceeded to bring a libel action in respect of these words. In losing it he was the unwitting means of producing a most important vindication by Hilbery, J., of the right to personal privacy and an assertion of the obligation of representatives of the Press to respect it. This book provides all those interested in this vital matter—a circle far wider than the legal profession—with the means of studying and comparing the full text of the hearings both in the police court and the High Court. It is no violation of the freedom of the Press to restrain its representatives from badgering the citizen going about his lawful occasions merely because someone in the editorial office wants matter for a " story." The " news hound " is a long-standing pest. It has been known for a journalist to be dismissed from his employment for refusing to go to interview the widow of a condemned man within half an hour of his execution. It is far from true that the whole Press is guilty of such excesses, but nevertheless it has not yet created a sufficiently strong and unanimous professional opinion to condemn them. This book opens with a very capable and readable introduction by Mr. H. Montgomery Hyde, who points the moral and adorns the tale with a keen insight into the implications of the decision.

The Rent Acts. By R. E. MEGARRY, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law. Third edition. 1947. London: Stevens and Sons, Ltd. 15s. net.

As in the case of his earlier editions, Mr. Megarry has contrived to arrange in an orderly fashion everything that has been decided, written or said about " these difficult and embarrassing Acts " in England, Scotland and Ireland; by tribunals ranging from the House of Lords to the county courts; and by contributors to various periodicals. The present edition contains, as would be expected, rather more about the working of the Furnished Houses (Rent Control) Act, 1946, and in his addenda the learned author gives us the gist of *R.* v. *Rent Tribunal for Hampstead and St. Pancras, ex parte Ascot Lodge, Ltd.*, 91 Sol. J. 265, and *R.* v. *Paddington and St. Marylebone Rent Tribunal, ex parte Bedrock Investments, Ltd.*, 91 SOL. J. 310, which so helped to define the scope of that statute and the jurisdiction of tribunals administering it. The two parts of the book—text and statutes—now appear in a single volume; this " in response to a number of requests " but against Mr. Megarry's personal inclination. The present reviewer, while he is among those who welcome the change, would agree that the process of arriving at a preference is akin to that by which a county court judge strikes a balance in a " hardship " case.

Banking and Currency. By ERNEST SYKES, B.A. (Oxon), with an Introduction by the late F. E. STEELE. 1947. London: Butterworth & Co. (Publishers), Ltd. 8s. 6d. net.

This excellent little book contains a minimum of law, but will provide all that can be desired in the way of background on a subject which lawyers certainly ought to make it their business to understand. The substance of the book is taken from lectures delivered by the author to city men, and the book is intended mainly as a textbook for those reading for the examinations of the Institute of Bankers and the London Chamber of Commerce. The author's explanatory style is well adapted to the needs of such students, and lends itself besides to quick assimilation by the busy man.

The book provides a broadly outlined account of those branches of banking and finance with which the banker is chiefly brought into contact, and in this ninth edition the original author has brought his work completely up to date, including a brief and commendably detached survey of the economic situation subsequent to the Second World War. Some interesting features in modern banking practice are noted. For instance, the virtual disappearance from the business of the banks and discount houses of the ordinary commercial bill of exchange in favour of the modern Treasury bill represents a trend which may easily have escaped the observation of a legal practitioner chained to the desk of a busy general practice.

The legal matter necessary in the presentation of the author's subject is adequately and, indeed, carefully stated.

NOTES OF CASES

CHANCERY DIVISION

Frankfurther *v.* W. L. Exner, Ltd.

Romer, J. 23rd June, 1947

International law—Expropriation by law of business carried on abroad—Effect given to foreign confiscatory legislation by English courts—"All risks" insurance.

Witness action.

The plaintiff, a Jew, carried on business in Vienna as a leather merchant. The defendant company carried on the business of leather merchants in London. By an agreement made in 1933 the plaintiff was appointed as sales agent for the defendant company in Austria on a *del credere* basis, the arrangement being that the defendant company should from time to time send goods to the plaintiff on consignment, and that the plaintiff should send to the defendant company remittances covering the value of goods sold within fourteen days of the date of sale. The plaintiff received a commission as remuneration. On 10th May, 1938, the plaintiff had a credit balance in the defendant company's books of £2,200.

On 10th March, 1938, Hitler invaded Austria. On 13th April, 1938, the Nazi authorities published Law No. 80, providing for the administration of certain business concerns by official administrators "for the protection of important public interests"; it was provided by s. 2 (1) that "the official administrator shall have full legal powers to act on behalf of the undertaking. During the period of administration the authority of the proprietor of the undertaking . . . shall be in abeyance." At the end of April, 1938, one S was appointed as administrator of the plaintiff's business; the plaintiff was ousted from control and was subjected to threats and imprisoned for a time. In May, 1938, the plaintiff under duress informed the defendant company that his credit balance should not be dealt with except with the consent of the administrator. The administrator from time to time sold parcels of the defendant company's goods, but did not (with certain exceptions) remit the proceeds; the defendant company debited the amounts of such sales against the plaintiff's credit balance, until the account was closed. The plaintiff brought this action to establish his claims to the balance of £2,200.

ROMER, J., said that it was not necessary to decide whether or not Law 80 was intended to be extra-territorial in its effect. It was confiscatory in character and operation. The evidence showed that it in practice led to the confiscation of the businesses of Jews and others who were objectionable to the Nazi authorities. The expulsion of a man from the direction and beneficial ownership of his business, coupled with the transfer without compensation of its control to the State for the benefit of the State, was plainly confiscation. Although Law 80 was not penal in the sense laid down in *Huntington* v. *Attrill* [1893] A.C. 150, yet confiscatory laws of this character were regarded here in the same light as penal laws (*Folliott* v. *Ogden* (1789), 1 H. Bl. 123; *In re Ferdinand, Ex-Tsar of Bulgaria* [1921] 1 Ch. 107; *In re Russian Bank for Foreign Trade* [1933] Ch. 745; *The Jupiter* [1927] P. 122, 250; *Employers' Liability Assurance Corporation* v. *Sedgwick, Collins and Co.* [1926] 1 K.B. 1; [1927] A.C. 95; *Lecontarier* v. *Ray* [1910] A.C. 262; *Banco de Vizcaya* v. *D. Alfonso de Borbon of Austria* [1935] 1 K.B. 40; *Lorentzen* v. *Lydden & Co., Ltd.* [1942] 2 K.B. 202; *Aksionairnoye Obschestro A.M. Luther* v. *James Sagar & Co.* [1921] 3 K.B. 532). The evidence showed that the administrator was not in Austrian law the plaintiff's agent in any sense. If Law 80 had extra-territorial effect, the authorities showed that no English court would recognise or enforce the claims of the administrator to assets of the plaintiff's business situated within its jurisdiction. Further, there was no evidence that the administrator ever gave directions to the defendant company to allocate the balance in the way they did. The defendant company had further contended that there had been a breach of contract on the part of the plaintiff in that he had failed to insure the goods against "all risks," as provided for in the agreement; that the goods had been lost when the administrator took over the business, and that therefore there was a counter-claim which could be set off against the plaintiff's claim. But "all risks" in such an agreement must mean commercial risks, and the risk which caused the loss was the intervention of the administrator and the authorisation given to him by the defendant company to sell the goods without binding him to transmit the proceeds to London; such a risk did not come within the agreement. The defendant company had no grounds of justification for resorting to the plaintiff's credit balance to wipe out their losses, and the plaintiff's claim must succeed.

COUNSEL: *Upjohn*, K.C., and *Walton*; *Lawson*.

SOLICITORS: *Slaughter & May*; *Moodie, Randall, Carr & Co.*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

Hall *v.* Jordan

Lord Goddard, C.J., Atkinson and Oliver, JJ.

24th April, 1947

Solicitor—Pretended qualification after suspension from practice—Isolated offence—Dismissal of information under Probation of Offenders Act—Validity.

Case stated by Middlesex justices.

Informations were preferred by the appellant, charging the respondent under s. 46 of the Solicitors Act, 1932, as amended by s. 22 of the Solicitors Act, 1941, with having on 1st April and 2nd May, 1946, wilfully pretended to be qualified to act as a solicitor. The respondent, having been admitted a solicitor in 1937, was in 1945 by an order of the Disciplinary Committee of The Law Society suspended from practice as a solicitor for two years. Before his suspension a client had consulted him in connection with a personal injury sustained in a collision. Some months having passed without any development in the case, in March, 1946, several interviews took place between the client and the respondent, and on 1st April and 2nd May, 1946, he wrote two letters (constituting the alleged offences) in the matter on her behalf, headed "without prejudice," on notepaper bearing the name of the firm under which he had practised, in the first instance with the words "Solicitors and Commissioners," and in the second instance without those words. The respondent never informed the client of his suspension. The justices found the offences proved, but, being of opinion that they appeared to be isolated matters in all the circumstances, held that the summonses should be dismissed under the Probation of Offenders Act on payment of five guineas costs on each summons. The prosecutor appealed.

LORD GODDARD, C.J., said that it was not open to the justices to act under the Act of 1907 in such a case. A man who acted as a solicitor while suspended from practice committed a very serious offence, for he was defying the tribunal which had been appointed by Parliament to regulate the discipline of solicitors. *Phillips* v. *Evans* [1896] 1 Q.B. 305; *White* v. *Hurrell's Stores* (1941), 85 SOL. J. 214; 164 L.T. 334; and *Oaten* v. *Auty* [1919] 2 K.B. 78; 63 SOL. J. 554, showed that the Divisional Court could, and would in proper cases, review action by justices under the Act of 1907. Wilfully pretending to be a solicitor, more especially when the offender had been suspended from practice, could never be a trivial offence. In any event, the justices had not acted within their powers under s. 1 of the Act of 1907, for they had not found that the offence was trivial, but only that it was "isolated." The appeal must be allowed, and the case remitted to the justices with a direction to convict.

ATKINSON and OLIVER, JJ., agreed.

COUNSEL: *Cumming-Bruce*; *A. S. Trapnell*.

SOLICITORS: *Hempsons*; *V. Mervyn Taylor*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Fletcher and Others *v.* Minister of Town and Country Planning

Morris, J. 30th July, 1947

Town and country planning—Proposal for new town—Conferences between Minister and local authorities concerned—Conferences before and after draft order—Whether "consultation"—New Towns Act, 1946 (9 & 10 *Geo.* 6, *c.* 68), s. 1 (1).

Appeal under the New Towns Act, 1946.

On the 4th February, 1947, the Minister of Town and Country Planning made an order under the Act of 1946 designating as the site of a proposed new town 5,910 acres of land situated in the urban and rural districts of Hemel Hempstead and two other rural districts. The order was challenged by the three appellants on the ground that the order was not within the powers of the Act, and, alternatively, that the requirements of the Act had not been observed, so that they had been substantially prejudiced, in that there was no consultation within the meaning of s. 1 (1) of the Act between the Minister and the local authorities appearing to him to be concerned before the order was made.

On the 16th July, 1946, the Minister wrote to the six local authorities appearing to him to be concerned stating that he was contemplating the development of a new town near Hemel Hempstead and suggesting a meeting between himself and them. In response to that invitation, on the 26th July a meeting took place between the Minister and his officials and representatives of the six authorities. On the 1st August, 1946, the New Towns Act, 1946, came into force. On the 27th September, 1946, the Minister published a draft order. Four of the authorities raised objections to that order. On the 19th November a meeting took place at Hemel Hempstead between the Minister and representatives of the six authorities, at which the Minister invited and replied to questions from them. On the 2nd December, 1946, a public local inquiry was held at which three of the authorities closely concerned raised objections to the draft order. On the 13th December, 1946, the inspector who held the inquiry made his report. It was contended for the appellants (*a*) that a consultation, to come within s. 1 (1) of the Act, must be an exchange of views between the Minister and the authorities concerned expressly or by necessary implication constituting a consultation for the purposes of the Act; (*b*) that no consultation taking place before the passing of the Act could be a consultation within the meaning of the Act; and (*c*) that the meeting of the 19th November, 1946, was not a consultation by reason (1) of the procedure of question and answer adopted and (2) of the ruling out from the discussion of topics including those of water supply and sewage, which meant that the Minister's mind was closed on those subjects. By s. 1 (1) of the Act of 1946, "If the Minister is satisfied, after consultation with any local authorities who appear to him to be concerned, that it is expedient in the national interest . . . he may make an order designating" an "area as the site of the proposed new town." (*Cur. adv. vult.*)

MORRIS, J., said that, while it might often be convenient that the requisite consultation should take place before the making of a draft order, as the Act specified no time when consultation must take place, it was sufficient to constitute consultation within the meaning of the Act that it should take place before the making of the final order. Whether consultation within the meaning of the Act had taken place was for the court to decide in each case according to the substance of the events which had happened. It could not depend on whether the parties to consultation had agreed in terms that they were engaged on a consultation within the Act. A consultation was not prevented from constituting a consultation within the meaning of the Act by the mere fact that it took place before the Act was passed. The meeting of the 26th July, 1946, was not, therefore, prevented merely by its date from being such a consultation. The fact that the Minister had stipulated at the meeting of the 19th November, 1946, that the transcript of the shorthand note of the proceedings should not be referred to in any subsequent proceedings did not prevent the meeting from constituting a consultation under the Act, for an agreement that a meeting should be regarded as private was not inconsistent with its constituting a consultation. The meeting of the 19th November was in effect a continuation of that of the 26th July, the interval giving the authorities ample time to consider their position. Thus the mere procedure of question and answer was also not inconsistent with consultation. The exclusion from the discussion at the meeting of the 19th November of the topics referred to had been suggested merely on the ground that such topics were more properly for discussion by experts only. It also, therefore, did not prevent the proceedings from constituting a consultation under the Act. The appeal must be dismissed.

COUNSEL: *C. L. Henderson*, K.C., and *G. A. Thesiger*, for the appellants; *The Attorney-General* (Sir Hartley Shawcross, K.C.) and *H. L. Parker*, for the Minister.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *Lovel Smeathman and Son*, Hemel Hempstead; *Treasury Solicitor*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY OF LANCASTER

***In re* Nelson, deceased; Nelson and Others *v.* Nelson and Another**

Sir John Bennett, V.-C. 7th July, 1947

Administration—Gift of shares inter vivos*—Transfer not registered in donor's lifetime—Donee appointed executor—Whether gift perfected.*

In September, 1945, the testator executed in favour of his wife a deed of gift and a transfer of 20,000 preference shares in the capital of a private limited company whose articles of association contained the usual restrictions on transfers of shares to persons not already members of the company, and authorised the directors to decline to register any transfer of shares to a person (not being already a member) of whom they should not approve. The testator and his father were the only shareholders and directors of the company, the latter being its chairman. Early in December, 1945, the testator and his father entered into negotiations for the sale of all the shares in the company to a financial concern, and the testator endeavoured to stop a cheque which he had caused to be sent for the purpose of paying the stamp duty on the deed of gift. Very shortly afterwards he was taken seriously ill, and on the 21st December, 1945, made his last will, of which he appointed his wife and three other persons executors. On the 8th January, 1946, the transfer of the 20,000 preference shares was presented to the company for registration. On the 6th February, 1946, a directors' meeting was held at the testator's home and immediately prior thereto the testator told the secretary of the company "not to bother about the transfer, but to leave it over for the time being." This was done and the testator died on the 17th March, 1946, the transfer being still unregistered. On the 3rd May, 1946, registration of the transfer was requested on behalf of his widow and (after a director had been appointed in place of the testator) was refused. Meanwhile, negotiations for the sale of the company's shares continued, and on the 9th May, 1946, the testator's executors signed their agreement to certain proposals which, as eventually carried out, included the sale of the shares to the Whitehead Industrial Trust, Ltd. Such proposals necessitated by implication the registration of the executors as holders of all the testator's shares (including the 20,000 preference shares), but the agreement was signed without prejudice to the rights of the widow or the executors in connection with the last-mentioned shares. The question raised was whether there had been an effective gift of the said preference shares to the widow, entitling her to the proceeds thereof.

The VICE-CHANCELLOR, after stating the facts and holding that on them and others not material to this report there had not been any completed gift *inter vivos*, said: "With regard to the second contention which I have mentioned, the deed of gift shows a clear intention to make a gift of the 20,000 preference shares to Mrs. Nelson. For the executors other than Mrs. Nelson it was contended that the intention to make the gift did not continue until Mr. Joe Nelson's death, and reliance was placed on the evidence of Mr. Beresford that on the 6th February, 1946, Mr. Joe Nelson said to him: 'Do not bother about the transfer, leave it over for the time being,' and also on the instruction given by Mr. Joe Nelson to Mr. Whitfield to stop the cheque for the stamp duty. But, in my opinion, Mr. Joe Nelson's conduct in both these instances is explained by the fact that negotiations for the sale of the shares to the Whitehead Industrial Trust, Ltd., were on foot, and if the shares were to be sold he might as well wait and hand the proceeds of sale to his wife and save the stamp duty; and that in fact he looked on himself as trustee of the shares for his wife. If the sale did not come off, there is nothing to show that Mr. Joe Nelson had any intention of cancelling the deed of gift or regarded his intended gift as in any way revoked. In my view, on the evidence before me, the intention to make the gift did persist until Mr. Joe Nelson died. Then it was argued that the appointment of Mrs. Nelson as executrix did not vest the legal estate in the shares, but there appears to be ample authority that where there is a clear intention to make an immediate gift, though the gift is not complete in law, and the intention to make the gift continues until the death of the donor, and the donor appoints the donee an executor of his will, or one of several executors of his will, the gift which was incomplete in the donor's lifetime is completed

by the appointment of the donee as executor and takes effect as a valid gift." He then referred to *Strong* v. *Bird* (1874), L.R. 18 Eq. 315; *In re Stewart* [1908] 2 Ch. 251; and *In re Pink* [1912] 2 Ch. 528, at p. 536, and continued: "By appointing Mrs. Nelson as one of the executors, she with her co-executors became entitled to 'the only means of enforcing a legal title' in the words of Farwell, L.J., and in fact the shares were registered in the names of the executors and they then became the legal owners of the shares. I have therefore come to the conclusion that the appointment of Mrs. Nelson as one of the executors completed and made valid what had been in the life of Mr. Joe Nelson an incomplete gift, and accordingly Mrs. Nelson is now entitled to the proceeds of sale of the 20,000 preference shares."

COUNSEL: *Allan Walmsley*, for the executors; *Andrew Clark*, K.C., and *George Maddocks*, for the widow; *S. Pascoe Hayward*, K.C., and *R. A. Forrester*, for the residuary legatees.

SOLICITORS: *Smith & Smith*, Burnley, for the executors and the residuary legatees; *Frank Roberts, Son & Baldwin*, Nelson, for the widow.

[Reported by W. A. N. ALSTEAD, Esq., Barrister-at-Law.]

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 2021. **Control of Engagement** Order. September 18.
No. 2071. **Exchange Control** (Authorised Dealers) Order. September 25.
No. 2036. Exchange Control (Authorised Depositaries) Order. September 20.
No. 2037. Exchange Control (Bailees Exemption) Order. September 20.
No. 2038. Exchange Control (Blocked Accounts) Order. September 20.
No. 2039. Exchange Control (Branches) Order. September 20.
No. 2040. Exchange Control (Collectors' Pieces Exemption) Order. September 20.
No. 2035. Exchange Control, Commencement of 1947 Act, Order. September 20.
No. 2041. Exchange Control (Declarations and Evidence) Order. September 20.
No. 2042. Exchange Control (Definition of Scheduled Territories) Order. September 20.
No. 2043. Exchange Control (Deposit of Securities) (Exemption) Order. September 20.
No. 2054. Exchange Control, Determination of Residence, Direction. September 20.
No. 2055. Exchange Control, Enforcement, Authority. September 20.
No. 2056. Exchange Control, Enforcement (Channel Islands), Authority. September 20.
No. 2044. Exchange Control (Import and Export) Order. September 20.
No. 2045. Exchange Control (Lending to Banks Exemption) Order. September 20.
No. 2072. Exchange Control (Payments) Order. September 25.
No. 2046. Exchange Control (Prescribed Courts) Order. September 20.
No. 2047. Exchange Control (Prescribed Securities) Order. September 20.
No. 2048. Exchange Control (Specified Currency) Order. September 20.
No. 2049. Exchange Control (Temporary Visitors' Exemption) Order. September 20.
No. 2050. Exchange Control (Traders in Coin) Order. September 20.
No. 2051. Exchange Control (Transfer from Custodian Exemption) Order. September 20.
No. 2052. Exchange Control (Transitional Provisions) Order. September 20.
No. 2053. Exchange Control (Transitional Provisions) (Channel Islands) Order. September 20.
No. 2033. **Food Preserves** (Amendment) Order. September 20.
No. 2011. **Road Vehicles** (Registration and Licensing) (Amendment) Regulations. September 10.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

Mr. A. E. Withy, solicitor, of Swindon, left £53,963; subject to two life interests, the residue to the Wiltshire County Council "for the purposes of education other than elementary, for the benefit of scholars who are poor in pocket but rich in merit, to which trust there shall be no sectarian, dogmatic, or religious test other than morality attached."

NOTES AND NEWS

Honours and Appointments

The King has approved the appointment of The Hon. THIBAUDEAU RINFRET, Chief Justice of Canada, to be a member of the Privy Council.

The King has approved the appointment of Mr. AIKEN WATSON, K.C., as Recorder of Bury St. Edmunds in succession to Mr. GERALD HOWARD, who has been appointed Recorder of Ipswich.

The King has approved of the rank and dignity of King's Counsel in Scotland being conferred on Mr. ANDREW DEWAR GIBB, advocate.

The King has approved a recommendation of the Home Secretary that Mr. ARTHUR MCFARLAND be appointed Stipendiary Magistrate of Liverpool in succession to Mr. Geoffrey Glynn Blackledge, who has resigned.

The Board of Inland Revenue has appointed Mr. CHARLES SIDNEY FOULSHAM to be H.M. Chief Inspector of Taxes in succession to Sir John James Cater, who is retiring from public service.

The President of the Board of Trade has appointed a committee, under the chairmanship of Mr. G. H. LLOYD JACOB, K.C., to make a general inquiry into the practice of resale price maintenance.

Mr. J. H. HUSBANDS has been appointed Assistant Deputy Coroner for the City of Nottingham. He was admitted in 1924.

Notes

The offices of the Clerks of Assize on the Oxford, Midland and Western Circuits are now at Ingersoll House, Kingsway, W.C.2.

The next General Quarter Sessions of the Peace for the County of Berkshire will be held on Monday, 6th October, 1947, at the Assize Courts, Reading, at 10.30 a.m.

The Liverpool Law Clerks' Society have arranged a varied programme of lectures to be delivered in the Common Hall, Hackins Hey, at 5.45 p.m., on Thursday evenings throughout the winter.

At the examination for Honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the Examination Committee of The Law Society recommended eleven candidates for second class honours and twelve candidates for third class honours. The Council have given class certificates to the candidates in the second and third classes. One hundred and seventeen candidates gave notice for examination.

WESTMINSTER ABBEY

MONDAY, 13TH OCTOBER, 1947

On the occasion of the reopening of the Law Courts a special service, at 11.30 a.m., will be held in Westminster Abbey, at which the Lord Chancellor and His Majesty's Judges will attend.

Barristers attending the service must wear robes. All should be at the Jerusalem Chamber, Westminster Abbey (Dean's Yard entrance), where robing accommodation will be provided, not later than 11.15 a.m.

The South Transept is reserved for friends of members of the Bar and a limited number of tickets of admission are issued; two of these tickets will be issued to each member of the Bar whose application is received by the Secretary of the General Council of the Bar, 5, Stone Buildings, Lincoln's Inn, W.C.2, not later than Thursday, 9th October.

No tickets are required for admission to the North Transept, which is open to the public.

HARTLEY SHAWCROSS,
Attorney-General.

WESTMINSTER CATHEDRAL

A Votive Mass of the Holy Ghost (the Red Mass) will be celebrated on Monday, 13th October, 1947 (the opening of the Michaelmas Law Term), at 11.15 a.m. Counsel will robe in the Chapter Room at the Cathedral. The seats behind counsel will be reserved for solicitors. Those desirous of attending should inform the Hon. Secretary, Society of Our Lady of Good Counsel, 6, Maiden Lane, W.C.2, so that an adequate number of seats may be reserved.

Sir Robert Newbald Kay, solicitor, a former Lord Mayor of York, Member of Parliament and Sheriff of York, left £51,587, with net personalty £19,152.